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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/668,465	09/25/2000	Mikhail Prokopenko	169.1856	2125
5514	7590	06/08/2004	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			BELIVEAU, SCOTT E	
			ART UNIT	PAPER NUMBER
			2614	10

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/668,465	PROKOPENKO ET AL.
	Examiner	Art Unit
	Scott Beliveau	2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3,4,6,8,9,11,12,14,16,17,19,20,22,24 and 70-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4,6,9,12,14,17,20,22 and 70-78 is/are rejected.
- 7) Claim(s) 3,8,11,16,19 and 24 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04 May 2004 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Invention I (Claims 1-24) in Paper No. 9 is acknowledged. The traversal is on the ground(s) that there would not be an undue burden in examining two groups of claims in a single application. For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. That *prima facie* showing may be rebutted by appropriate showings or evidence by the applicant. Accordingly, applicant's arguments are not found persuasive because simply because the groups of claims are "not so different" in itself is an insufficient showings or evidence so as to rebut the grounds of restriction between combination and subcombination with separate utility being separately classifiable. The requirement is still deemed proper and is therefore made FINAL.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 9, and 17 have been considered but are moot in view of the new ground(s) of rejection.

Drawings

3. The drawings were received on 04 May 2004. These drawings are approved.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 4, 6, 9, 12, 14, 17, 20, 22, 70, 71, 73, 74, 76, and 77 are rejected under 35 U.S.C. 102(b) as being anticipated by Lawler et al. (US Pat No. 5,758,259).

In consideration of claim 1, Figure 1 of the Lawler reference discloses a method for “enabling the selection of a program for viewing in a television system” [10] (Col 6, Lines 11-21). The method involves the “recording a plurality of attributes” that are “associated with each program viewed by the said user” (Tables 1A-D; Col 7, Lines 36-60). The “attributes” comprise a “first attribute associated with characteristics of said program . . . made available as Electronic Guide (EPG) data” (Col 7, Lines 26-35) and a “second attribute” or count “associated with the viewing of said programs” (Col 7, Line 62 – Col 8, Line 3). For example, a viewer watches a number of programs each of which is associated with particular “attributes” (ex. Tim Allen) associated with the characteristic Name (Table 2) and an “attribute” associated with the number of times a viewer watched a program with Tim Allen. These “attributes” are “formed” into “sets” as stored in Table 2 such as S₁={Genre, Talk, 54}, S₂={Sub-Genre, Comedy, 8}, S₃={Name, David Letterman, 54}, S₄={Name, Tim Allen, 27}, and S₅={Name, Roseanne Barr, 42}. Accordingly, “upon entry of a user request for a program recommendation” (Col 4, Lines 43-49), the apparatus “performs a search for programs with attributes” (ex. Tim Allen and Talk) that “include the attributes of said sets”

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whereupon the user is “notified . . . of an availability of programs that include the attributes of said sets as program recommendations” (Figure 3B; Col 8, Line 45 – Col 9, Line 19).

Alternatively, the claim limitations may be met wherein “upon entry of a user request for a program recommendation” (Col 4, Lines 43-49), the method “forms sets of said attributes . . . comprising at least two of said attributes” wherein $S_{P1} = \{\text{talk, comedy, David Letterman, Tim Allen, Rosanne Barr}\}$ and $S_{P2} = \{\text{news, Peter Jennings}\}$. Subsequently, the method “performs a search of the EPG data for programs with attributes that include the attributes of said sets” and “notify said user of an availability of programs that include the attributes of said sets as program recommendations” (Figure 3B; Col 8, Line 45 – Col 9, Line 19).

Claims 4, 6, 12, 14, 20, and 22 are rejected in view of the alternative rejection wherein the “program recommendation are based on the programs with the greatest number of attributes included in said sets”. For example, S_{P1} comprises five attributes and S_{P2} comprises two attributes. S_{P1} is subsequently recommended over S_{P2} (Col 8, Line 45 – Col 9, Line 19).

Claim 9 is rejected wherein the embodiment comprises “memory means”, “processing means”, and “searching means” as provided by the central control node [12] and “on-screen display means” [18] at the user terminal.

Claim 17 is rejected wherein the method of claim 1 may be implemented as a “computer program product” comprising “computer program code” (Col 12, Lines 6-8).

Claims 70, 73, and 76 are rejected wherein each “set” is associated with a “value . . . representing the number of programs viewed by said user including the attributes in said set, wherein said search is performed for programs with attributes that include the attributes of

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the set with a highest value" (Figure 6). Alternatively, the "set" is associated with a value in conjunction with the summation of the various attributes comprising the set.

Claims 71, 74, and 77 are rejected wherein "said second attributes associated with the viewing of said programs include user information" defining the number of times a user watched programming associated with a particular attribute which is "combined" with the "said EPG data" into a record set as stored in Table 2.

6. Claims 1, 4, 6, 9, 12, 14, 17, 20, 22, and 70-78 are rejected under 35 U.S.C. 102(b) as being anticipated by Reynolds et al. (EP 774 866 A2).

In consideration of claim 1, the Reynolds et al. reference discloses a method for enabling the selection of a program for viewing in a television system (Figures 1 and 4). The method "records a plurality of attributes associated with each program viewed by a user, said attributes comprising first attributes associated with characteristics of said programs" such as that associated with a particular topic/theme "made available as Electronic Program Guide (EPG) data" and "second attributes associated with the viewing of said programs" in the form of last viewed information (Figure 2). These "attributes" may be "formed" into "sets comprising at least two of said attributes" (Figure 6c), such as the combination of attributes "movie/comedy". Subsequently, "upon entry of a user request for a program recommendation" (Figure 6a), the embodiment is operable to "perform a search of the EPG data for programs with attributes that include attributes of said sets" and to subsequently "notify said user" as to the "availability of programs that include the attributes of said sets as program recommendations" (Figure 6B; Figure 5).

Claim 9 is rejected wherein the embodiment comprises “memory means”, “processing means” [415R], “searching means”, and an “on-screen display means” [403].

Claim 17 is rejected in view of claim 1 wherein the aforementioned method may be implemented via a “computer program product” that is executed via the aforementioned processor means [415R].

Claims 4, 6, 12, 14, 20, and 22 are rejected wherein “program recommendations are based on programs with the greatest number of attributes included in said sets” wherein the illustrated example provides that “sets” (Figure 6C) may comprise either one attribute (ex. Title) or two attributes (ex. Topic and Theme). Accordingly, program recommendations may be “based on” the particular number of attributes given that a set comprising more than one attribute may have an associated higher value associated with a greater number of viewings associated with the multiple attribute set.

Claims 70, 73, and 76 are rejected wherein each “set” is associated with a “value . . . representing the number of programs viewed by said user including the attributes in said set (Col 2, Lines 26-45), wherein said search is performed for programs with attributes that include the attributes of the set with a highest value” (Figure 5; Col 3, Lines 24-33).

Claims 71, 74, and 77 are rejected wherein “said second attributes associated with the viewing of said programs include user information” defining the number of times a user watched programming associated with a particular attribute which is “combined” with the “said EPG data” into a record set (Figure 6c).

Claims 72, 75, and 78 are rejected wherein the “second attributes include one or more of time of data and day of week information” (Col 2, Line 35-45). A particular date (D-M-YYYY) is construed as a form of “day of week information”.

Allowable Subject Matter

7. Claims 3, 11, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With respect to the art of record, based on the examiner’s broad interpretation of the particular usage of “user information” being associated with the particular number of times that a viewer selected a particular program, the further limitation that the “user information includes a mood being experienced by said user” is not taught or suggested by the rejection of record.
8. Claims 8, 16, and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With respect to the art of record, the interpretation based on the creation of sets of attributes with either the Lawler et al. or Reynolds et al. references would presumably be “formed in response to that at least one of the programs viewed by said user have shared attributes” as opposed to claimed limitation such that the sets are “formed in response to that at least two of the programs viewed by said user have shared attributes”.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure as follows. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objections made.

- The Gutta (US Pat No. 6,727,914) reference discloses a method and apparatus for recommending television programming using decision trees.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Beliveau whose telephone number is 703-305-4907. The examiner can normally be reached on Monday-Friday from 9:00 a.m. - 6:30 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on 703-305-4795. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SEB
May 24, 2004



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